

June 25, 2013

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Connect America Fund*, WC Docket No. 10-90 –
Request for Extension of August 5, 2013 Deadline
for Election of CAF Phase I, Round Two Incremental Support

Dear Ms. Dortch:

FairPoint Communications, Inc. (“FairPoint”) hereby requests a 15-day extension of the deadline by which price cap carriers must make an election of support from the second round of Connect America Fund (“CAF”) Phase I incremental funding (“Round Two”), as set forth in the Commission’s rule 47 C.F.R. § 54.312(c)(4). This extension is necessary to provide price cap carriers adequate time in which to conduct the necessary analyses of their network engineering, operations, and business considerations prior to accepting any Round 2 support and the concomitant broadband commitments, as well as to meet with Commission staff at least 15 days before making their election, as advised by the Commission.¹

Background

On May 22, the Commission announced in the Phase I Round Two CAF Order that it will allocate \$300 million in a second round of CAF Phase I incremental support, specifying that “[c]arriers will have 75 days from the release of this Order to make their elections.”² The Order included significant changes to the eligibility parameters for Round Two support. For example, carriers may seek a lower amount of support to serve locations that lack access to broadband service at speeds of at least 3 Mbps/768 kbps, if a carrier has not fully utilized its allotted funding after accepting incremental support to deploy broadband to all qualifying unserved

¹ See *Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 13-75 (rel. May 22, 2013), ¶ 30 (“Phase I Round Two CAF Order” or “Order”).

² Phase I Round Two CAF Order, ¶ 10.

locations that lack access to at least 768 kbps/200 kbps.³ This modification alters the scope of each carrier's analyses in making a determination to elect Round Two support. FairPoint, and likely other carriers, did not previously evaluate locations with broadband speeds higher than 768/200 kbps, but lower than 3Mbps/768 Mbps, because such locations were not eligible for support based on the criteria for the first round of Phase I incremental CAF support.

The deadline for carriers to make Round Two elections is August 5, 2013. The Commission also "strongly encourage[s] those electing funding to submit their intended elections and planned buildout locations by census block to the Bureau on a confidential basis at least 15 days in advance of the acceptance deadline."⁴ Because electing carriers will not be permitted to amend their elections once the eligible census block challenge process has begun, carriers are advised "to discuss their elections with Commission staff at least 15 days prior to the election deadline in order to ensure facial compliance with the filing requirements."⁵ In order to comply with this "strong" recommendation, carriers would need to complete their analysis of locations that would be eligible for Round Two support before July 19, 2013 in order to meet with Commission staff by this date. In essence, this allows carriers only 59 days, at best, to conduct the necessary assessment of their network engineering, operations, and business considerations (including costs and expected take rate) that are necessary prior to making a Round Two election.

The Requested Extension Is Warranted

Since the release of the Phase I Round Two CAF Order, FairPoint has been working diligently to complete its analyses and prepare for its Round Two election filing by August 5. However, FairPoint operates in 17 states. The 75 days allotted by the Commission will not be adequate for FairPoint to complete the necessary work, especially when this time period is abbreviated by the need to meet with Bureau staff by July 19. The 15-day lead time for consultation with the Commission prior to the election deadline effectively reduces the election timeframe in Round Two to 59 days. FairPoint appreciates the opportunity for confidential consultation with Commission staff prior to the Round Two election date, but carriers should not lose 15 days critical to their assessment, planning, and decision-making time as a result of the recommended consultation.

FairPoint therefore urges the Commission to grant an additional 15 days to the allotted timeframe for all price cap carriers to make a Round Two election, in light of the 15 or more days that will be lost by having to complete their assessments prior to consultation with Commission staff. For the reasons discussed below, FairPoint requires the additional time to complete the thorough analysis needed for an informed election. The requested extension would allow price cap carriers until August 20 to submit their elections, and permit them to target meetings with the Bureau staff by August 5.

³ See 47 C.F.R. § 54.312(c)(2) and (c)(3).

⁴ Phase I Round Two CAF Order, ¶30.

⁵ *Id.*, ¶¶ 27, 30.

The Commission reduced the election timeframe for Round Two to 75 days, from the 90 days allotted in the first round, and based on FairPoint's experience, every day in the election timeframe is critical for making an informed decision. In providing carriers with 75 days to make their Round Two election, the Commission concluded "that carriers will require less time to prepare their second round elections ... [because] much of the analysis they carried out for the first round can be reused for the second round."⁶ However, this assumption by the Commission is inaccurate, at least in FairPoint's case. Because the parameters of eligibility for that first round of Phase I incremental support were different, before making an election FairPoint did not complete as thorough an analysis of all of its service areas in 17 states as it now is required to do. For example, modifications made in the Phase I Round Two CAF Order to the merger commitment restrictions now make it possible for FairPoint to use Round Two support in locations where it does not have merger commitments for 4/1 Mbps speeds, but may have merger commitments for broadband at lower speeds.⁷ Similarly, FairPoint made a prudent business decision not to analyze all of its rate-of-return study areas last year for the first round of support, knowing that most locations in these high-cost areas already have broadband service and were not unserved at the 768/200 kbps level according to the requirements of the first round of support.⁸

With the expansion of the eligibility parameters for Phase I incremental support "to any location currently unserved by Internet service with speeds of 3 Mbps downstream and 768 kbps upstream (3 Mbps/768 kbps) or higher, though a lower dollar amount of support is provided for locations that already have some level of Internet access,"⁹ it now makes good business sense for FairPoint to expend the time and effort to conduct analyses of its Maine and New Hampshire service areas and its rate-of-return study areas. Now, FairPoint has a reasonable expectation that a sufficient number of locations may be eligible for Round Two support to make these efforts

⁶ *Id.*, note 29.

⁷ The Commission explained that "Phase I incremental support may be used in areas where the carrier may be subject to an existing regulatory obligation or merger commitment to deploy lower speed Internet access service that does not meet the 4 Mbps/1 Mbps broadband speed threshold. In this instance, the support would appropriately be used to support the cost of the upgrade to meet the Commission's standards, not the cost of meeting the original regulatory obligation or merger commitment." Phase I Round Two CAF Order, note 51.

⁸ *See Connect America Fund; High-Cost Universal Service Support*, FairPoint Communications, Inc. Petition For Waiver Of Sections 54.312(b)(2) And (3) Of The Commission's Rules And Conditional Election Of Incremental CAF Support, WC Docket Nos. 10-90 and 05-337, note 34 (filed Sept. 10, 2012) (explaining that even for the few sites that might have been eligible for the first round of CAF Phase I incremental support FairPoint would need to evaluate the economic business case in its rate-of-return areas by conducting "an almost mile by mile analysis of some of its most rural areas across the 15 states where its rate-of-return operating companies provide service").

⁹ Phase I Round Two CAF Order, ¶ 7. *See also* 47 C.F.R. § 54.312(c)(3).

worthwhile. FairPoint has a significant amount of work to do in a short period of time in order to take advantage of the Round Two opportunity.

It is reasonable to expect that other price cap carriers are experiencing constraints that warrant the requested 15-day extension. Moreover, because of the integrated nature of the Round Two funding, where the amount allocated to any single carrier may depend in part on the elections made by other carriers, it is not feasible for the Commission to grant additional time only to FairPoint. FairPoint therefore requests an extension of time for all price cap carriers that are evaluating Round Two support, to improve the election process and avoid undue hardship.

Denial of an extension would likely mean that FairPoint, and other price cap carriers, would not have sufficient time to complete the necessary analyses for making a Round Two election and, as a result, may not elect as much of their allocated support nor make the same level of broadband build-out commitment as they would with more adequate time for evaluation. Adherence to the 75-day deadline thus would not serve the Commission's near-term broadband deployment goals. A brief 15-day extension of the election deadline is a reasonable step toward meeting the Commission's greater goal of spurring immediate broadband build-out with the additional funding provided in Phase I of the CAF through incremental support.¹⁰

Please direct any questions concerning this matter to me.

Respectfully submitted,

/s/

Karen Brinkmann

Counsel for

FairPoint Communications, Inc.

cc: Julie Veach
Carol Matthey
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¹⁰ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶22 (2011) ("USF/ICC Transformation Order").